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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Reports submitted by States parties under article VII of the Convention

Addendum

SENEGAL*

[28 February 1991]

* The initial report submitted by the Government of Senegal (E/CN.4/1277/Add.10) was considered by the Group of Three at its 1978 session.

Historical introduction

1. The crime of apartheid is a problem related to the characteristic violation of human rights by groups of individuals banded together to form States. One such case is the Republic of South Africa, where different Governments have made a policy of racial segregation since 1909, when Dutch-speaking Afrikaners and English-speaking groups joined to form the Union of South Africa on the strength of a law they passed.

2. From the 1789 Declaration of the Rights of Man and of the Citizen to the 1945 Charter of the United Nations and the 1948 Universal Declaration of Human Rights, a single principle has underlain the organization of mankind and has been taken up by each of these international agreements: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The same principle is found in the Preamble to the Charter of the United Nations, which was signed in San Francisco on 26 June 1945 and entered into force on 24 October 1945: "We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, [...] in the equal rights of men and women and of nations large and small ...".

3. Apartheid is the antonym of this great principle on which mankind rests. In its etymological derivation, the word "apartheid" means "separateness", and the South African Government chose it for its system of separate development based on racial segregation, oppression and the exploitation of coloured people. As practised since by the Republic of South Africa, apartheid is a definite threat to international peace and security. For this reason the United Nations has been concerned with the matter since 1946, and has set itself the goal of organizing a rational legal battle to get it eradicated. The General Assembly and the Security Council ruled that apartheid was incompatible with the Charter of the United Nations, and called on South Africa to abandon the policy if it wished to remain a Member of the Organization. When South Africa flatly refused, the United Nations called on Member States to break off diplomatic, commercial, military, cultural, sporting and other relations with South Africa. It also called on the international community to condemn apartheid as a crime against humanity. In 1962, the General Assembly set up a Special Committee to monitor developments in the situation in South Africa.

4. In 1963, the Security Council revealed that weapons supplied to South Africa were being used to provide logistical support for its policy; it promptly declared a voluntary embargo on supplies of arms, which was later extended to equipment and materials used in the manufacture and upkeep of weapons. In 1970, the Security Council condemned all violations of the arms embargo and called on all States Members of the United Nations to apply it in full, and also to stop supplying military vehicles and spare parts, to cancel licences for weapons manufacture and to halt all military cooperation with South Africa. On 4 November 1977, following the repression of anti-apartheid demonstrators, the voluntary embargo was made mandatory by unanimous decision of the Security Council pursuant, for the first time in the history of the United Nations, to Chapter VII of the Charter, which allows for coercive

action. Previously, in 1973, the General Assembly had adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid, which entered into force in 1976. South Africa persisted in applying its policy of apartheid, and on 12 November 1974 was deprived of its right to take part in the General Assembly; it has not taken part since. By contrast, liberation movements, including the African National Congress of South Africa and the South-West Africa People's Organization (SWAPO), are entitled to attend United Nations General Assemblies.

5. Within Africa, the Organization of African Unity (OAU) has, since its foundation on 25 May 1963, set up elaborate machinery to combat apartheid. It began by organizing a united front to combat this crime against humanity, making African and international public opinion fully aware of the danger South Africa posed to the continent. It was in that setting that OAU spurred the holding of a World Conference for Action against Apartheid in August 1977, in Lagos, Nigeria. The Conference adopted the Lagos Declaration for Action against Apartheid, which discussed and condemned all aspects of the system. The Conference also recognized the legitimate aspirations of the South African people and called on all States to lend them their backing and support. It committed all Governments and peoples to provide backing and support for the liberation movements recognized by OAU, and to enable the entire South African people to attain self-determination. OAU also prompted the countries bordering on South Africa - the so-called front-line States - to organize and form a secure base for actions by the liberation movements in their fight against apartheid. It also helped the South African liberation movements to organize themselves properly, and provided them with the moral and physical support they needed in their campaigns against South Africa.

6. As regards the Republic of Senegal, its efforts in the campaign against the crime of apartheid take a number of forms. First are the general aspects, Senegal's efforts as part of the concert of nations opposed to apartheid. Then there is a punitory aspect, marked by the absence of any relations of any kind with the South African apartheid regime. Lastly there is a preventive aspect, comprising all the legislative, administrative and legal precautions taken by the public authorities since independence to avert any racial prejudice that could eventually develop into apartheid. These three aspects of Senegalese policy together show the extent of the efforts made over more than a quarter of a century to weed out apartheid from the ranks of mankind.

I. General aspects of Senegalese policy on apartheid

7. Since attaining international sovereignty, the Republic of Senegal has never ceased to manifest its commitment to the principle of popular self-determination and its concern for the total liberation of the African continent. For a quarter of a century it has spared no effort to provide moral and physical support to the South African people struggling against apartheid, and to those fighting in Namibia. It is contributing to the struggle for Namibian independence as a complete territorial unit, including the base at Walvis Bay which South Africa is seeking to split off from the rest of the Territory.

8. This commitment has taken concrete form in a number of ways, including the first International Conference on Namibia and Human Rights, held in Dakar

in 1976; the election of Senegal to the presidency of the International Conference on Solidarity with the Struggle of the People of Namibia, held in Paris from 11 to 13 September 1980, and, recently, a meeting in Dakar in July 1987 between ANC leaders and leading white South African liberals on the topic "For a multiracial Republic of South Africa". After Senegal was elected to the presidency of the International Conference on Solidarity with the Struggle of the People of Namibia, it was asked to undertake the coordination, at the opening of the thirty-fifth session of the United Nations General Assembly, of initiatives to be taken in conjunction with the United Nations Secretariat in the context of efforts to bring about the liberation of Namibia.

9. At a meeting of the Security Council on the subject of Namibia held in New York in April 1981, Senegal was one of the countries designated to explain to the Council the conclusions reached at the meeting of the Coordinating Bureau of the Non-aligned Countries held in Algiers earlier that month. Together with other countries, it performed the same service at the Seventh Conference of Heads of State or Government of Non-aligned Countries in New Delhi, in March 1983. At the thirty-seventh session of the United Nations General Assembly, SWAPO and the President of the United Nations Council for Namibia jointly obtained the Senegalese delegation's consent that Senegal would preside at the International Conference in Support of the Struggle of the Namibian People for Independence, held in Paris from 25 to 29 April 1983. Besides this, Senegal contributes regularly to the Non-aligned Solidarity Fund for Namibia, the OAU Solidarity Fund for Namibia and the Special Fund of the OAU Coordinating Committee for the Liberation of Africa.

10. Mention should also be made of the eminently helpful role played by certain Senegalese non-governmental organizations in the struggle against apartheid and the illegal occupation of Namibia by South Africa. These include the Senegalese Association for African Unity (ASSUNAF), the Senegalese United Nations Association (ASNU) and the Senegalese Anti-apartheid Committee. These organizations work at all levels to alert Senegalese and international public opinion to the pernicious effects of apartheid.

11. On every occasion and at every level, Senegal is untiring in its manifold efforts to induce South Africa to withdraw from Namibia without preconditions, in accordance with the United Nations settlement plan set out in Security Council resolutions 385 (1976) and 178 (1978) and inspired by article 1 of the International Covenant on Civil and Political Rights.

12. A tour by the Senegalese President to the front-line States from 1 to 9 October 1985 provided confirmation of the resolve of the national liberation movements fighting illegal occupation and racial segregation in Namibia and South Africa to continue the battle against the system of oppression which apartheid represents. The presidential tour also provided an opportunity to secure official commitment by all the countries adjoining South Africa to the principle of comprehensive and mandatory economic sanctions against South Africa.

13. With all this information to support him, the President of Senegal was able, from the podium of the United Nations General Assembly on 23 October 1985, to call on the international community to continue to put

pressure on South Africa, to increase the aid it provided to the liberation movements fighting in southern Africa, and to convene in June 1986, under United Nations auspices, an international conference on sanctions against South Africa. Lastly, it should be mentioned that in order to commemorate the struggle by the South African fighters against apartheid, the Republic of Senegal named the square opposite the Senegalese Parliament after the black city of Soweto. It also named the avenue leading from the Presidential Palace to Parliament after the great South African campaigner, Nelson Mandela.

14. These various indications bear witness to the intention of the Senegalese authorities to leave no stone unturned in the mobilization of African and international public opinion against the loathsome crime of apartheid. Its example will doubtless prove a source of inspiration for the young people of Africa whose lot it is to take up the torch of the anti-apartheid struggle.

II. The punitory aspect of Senegalese policy on apartheid

15. The struggle against apartheid began in Senegal immediately after the country acquired international sovereignty. An official statement dated 16 July 1963 reads as follows:

> The Government of the Republic of Senegal, faithful to the Charter of the United Nations and the Universal Declaration of Human Rights and desirous of helping to bring about the unity and progress of the African continent; convinced that the objectives laid down in the Charter of the Organization of African Unity will bring about the disappearance of all forms of domination and segregation on the continent; decides:
>
> - To break off consular relations with Portugal;
> - To prohibit any aircraft or ship flying the Portuguese or South African flags to overfly the airspace, land at the airfields or put in at the ports of the Republic;
> - To ban from the territory of the Republic any foodstuffs, goods or articles arriving from Portugal or the Union of South Africa;
> - To prohibit any Portuguese or South African national from sojourning in the territory of Senegal.
>
> The above measures shall take effect immediately.

16. This political determination to combat apartheid took concrete form in Decree No. 63.524 of 17 July 1963, which reads as follows:

> The import into the territory of the Republic of any product originating in or arriving from Portugal or the Union of South Africa is prohibited. The Ministry of Finance and Economic Affairs shall be responsible for enforcing this decree, which will be published under the emergency procedure.

This first decree was followed by another, No. 63.535 of 27 July 1963, the thrust of which was as follows:

> Overflight of Senegalese territory by any aircraft bearing the national markings of Portugal or South Africa is prohibited. Landing at Senegalese airfields by the said aircraft is likewise prohibited. Aircraft in breach of this article will be seized.
>
> Any of the authorities referred to in article 81 of Act 62.19, dated 5 February 1963, establishing the Civil Aviation Code may perform the said seizure.
>
> Access to Senegalese ports and territorial waters is prohibited to ships flying the Portuguese and South African flags, whatever their place of registration.
>
> Vessels in breach of this rule will immediately be instructed to leave Senegalese territorial waters, and will if necessary be conducted to the limits thereof. The port authorities are empowered to issue the aforesaid instructions.
>
> In the event of failure to comply after instruction, the authorities referred to in article 215 of the Merchant Marine Code are empowered to take any steps that may be required to have the ships escorted to the limits of Senegalese territorial waters. In view of current international rules, this decree shall not, however, apply to salvage operations or assistance to aircraft or ships in distress, or to the conduct of such ships or aircraft to Senegalese ports or airfields.

17. A last Decree, No. 63.536 of 27 July 1963, reads as follows: "Entry into and sojourn within Senegal are prohibited to Portuguese and South African citizens."

18. After the independence of the territories formerly under Portuguese domination, the Government of the Republic of Senegal changed its stance towards the former colonial Power by removing it from the scope of the above decrees. Regard for form led to the adoption of new decrees to this effect, whose object was also to uphold the prohibitions vis-à-vis South Africa, the only country applying apartheid.

19. The first of these decrees appeared as No. 75.095 of 21 January 1975, amending Decree 63.524 of 17 July 1963. It read as follows:

> The title and article 1 of Decree No. 63.524 of 17 July 1963 are hereby rescinded and replaced by the following:
>
> Title: Decree 63.524 of 17 July 1963 prohibiting the import of products originating in or arriving from the Union of South Africa.
>
> Article 1: The import into the territory of the Republic of any product originating in or arriving from the Union of South Africa is prohibited.

20. The second decree appeared as No. 75.096 of 21 January 1975, amending the title and article 1 of Decree 63.536 of 27 July 1963 prohibiting Portuguese and South African citizens from entering or sojourning in the country. It read as follows:

> Title: Decree 63.536 of 27 July 1963 prohibiting the entry into and sojourn in Senegal by South African citizens.
>
> First article: Entry into and sojourn within Senegal are prohibited to South African citizens.

21. Lastly, the third such decree bore the number 75.097 of 21 January 1975, rescinding and replacing the title, article 1 and article 3, paragraph 1, of Decree No. 63.535 of 27 July 1963, prohibiting overflight of Senegalese territory and landing at Senegalese airfields by Portuguese and South African aircraft. It read as follows:

> Title: Decree No. 63.536 of 27 July 1963 prohibiting overflight of Senegalese territory and landing at Senegalese airfields by South African aircraft.
>
> Article 1: Overflight of Senegalese territory by any aircraft bearing South African national markings is prohibited.
>
> Article 3, paragraph 1: Access to Senegalese ports and territorial waters is prohibited to ships flying the South African flag, whatever their place of registration.

22. Thus for a quarter of a century there have been no contacts between the Republic of Senegal and the Union of South Africa either at the State level or among members of the general public. This, in our view, is heavy punishment indeed for the crime of apartheid, which must be nipped in the bud. The Senegalese Government has also used other means to punish the loathsome crime of apartheid, namely the international instruments drawn up by the United Nations to combat and stamp out this scourge.

23. Act No. 63.34 of 20 June 1967 ratified the Convention against Discrimination in Education of 14 December 1960. The President was authorized by Parliament to ratify the International Convention on the Elimination of All Forms of Racial Discrimination, whose publication in the Official Gazette was ordered by Decree No. 72.992 of 26 July 1972. Act No. 77.08 of 5 July 1977 authorized the President to announce the accession of the Republic of Senegal to the International Convention on the Prevention and Punishment of the Crime of Apartheid. Publication of this Convention in the Official Gazette was ordered by Decree No. 77.300 of 18 April 1977. Act No. 81.74 of 10 December 1981 authorized the President to ratify the Convention on the Elimination of All Forms of Discrimination against Women. Act No. 83.21 of 28 January 1983 authorized the President to announce the accession of the Republic of Senegal to the Convention on the Prevention and Punishment of the Crime of Genocide adopted in New York.

24. Act No. 86.40 of 11 August 1986 ratified the International Convention against Apartheid in Sports of 10 December 1985. It should be noted that just

after independence, in an exchange of letters dated 9 May 1963 between the Secretary-General of the United Nations and the Republic of Senegal, Senegal, by virtue of the principle of succession of States, had already acknowledged itself bound by several international conventions on the subject of racial discrimination. These included:

(a) The International Convention for the Suppression of the Traffic in Women of Full Age, signed in Geneva on 11 October 1933;

(b) The International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, signed in Paris on 18 May 1904 and amended in New York on 4 May 1949;

(c) The International Convention for the Suppression of the White Slave Traffic signed in Paris on 4 May 1910, and amended in New York on 4 May 1949.

25. As will be realized, apartheid is a social phenomenon practised by just one State as a mode of government. This is why, from the point of view of punishment, it is on that State that the rigours of punishment should fall. Senegal has never lost sight of this in taking this series of measures.

III. Preventive aspects of Senegalese policy on apartheid

26. Apartheid emanates from, and is the most extreme version of, discrimination. Aware of this, the Republic of Senegal, while combating the scourge of apartheid on all fronts, has put in place an arsenal of legal measures to prevent acts of discrimination in any form. The principle underlying these measures is laid down by the Constitution, the basic law which shapes Senegalese public institutions and establishes the fundamental freedoms of the individual.

27. Articles 1 and 4 of the Constitution state that the Republic of Senegal shall be secular, democratic and social. It shall ensure equality before the law to all citizens without distinction as to origin, race, sex or religion. It shall respect every faith. Any act of racial, ethnic or religious discrimination and any regionalistic propaganda liable to disturb the internal security of the State or the territorial integrity of the Republic shall be punished by law. Article 7 of the Constitution lays down the principle that all human beings are equal before the law and proclaims equality of rights between men and women, adding that there shall not in Senegal be any liability or privilege arising out of birth, personal status or family.

28. Pursuant to this principle and in particular to the international Conventions on the elimination of all forms of racial discrimination and on the suppression and punishment of the crime of apartheid, the Republic of Senegal in Act No. 81.77 of 1 December 1981 adopted the definition of discrimination laid down in the former of the said two Conventions, which reads as follows:

> "Racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing

the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

29. The Act modified the Penal Code, by adding an article 283 bis. It also declared the following to be crimes subject to severe penalties:

(a) Any dissemination of ideas based on racial superiority or hatred;

(b) Any incitement to racial discrimination;

(c) Any acts of violence or provocation of acts directed against any race or group of persons of another colour or ethnic origin;

(d) Provision of any assistance to racist activities, including the financing of such activities.

30. For this purpose an article 256 bis was added to the Penal Code; the text of the new article renders liable to from one month's to two years' imprisonment and a fine of 25,000 to 300,000 francs.

[...] anyone who posts, displays or screens for public view, offers free of charge, even if not publicly, in any form, directly or by devious means, distributes or makes available for distribution by any means, any objects or depictions, printed matter, writings or drawings, posters, engravings, photographic portraits, films or snapshots, photographic negatives, engravings or reproductions or emblems intended to proclaim racial superiority or give rise to a sense of racial superiority or racial hatred, or constituting incitement to racial, ethnic or religious discrimination.

31. The Act also added an article 257 bis, reading as follows:

The penalties provided for under article 256 bis shall also apply to anyone who causes to be heard in public any songs, cries or speeches on the subject of racial superiority or constituting incitement to racial, ethnic or religious discrimination or racial hatred.

32. Article 261, paragraph 2, of the Penal Code as amended by Act No. 77.87 of 10 August 1977, states that:

Defamation, by the same means as described in article 248, of any group of persons who by origin belong to a specific race or religion shall be punishable by from two months' to two years' imprisonment and a fine of 50,000 to 500,000 francs when committed with the intention of stirring up hatred among citizens or inhabitants.

33. Article 262, paragraph 2, of the Penal Code states that:

Insult offered in the same manner to individuals in the absence of provocation shall be punishable by a maximum of two months' imprisonment, and a fine of 20,000 to 100,000 francs, or by either of these penalties alone. The maximum penalty shall be six months, and the maximum fine,

500,000 francs, if insult is offered to a group of persons belonging by origin to a specific race or religion, with the aim of stirring up hatr among citizens or inhabitants.

34. Article 277 of the Penal Code as amended by Act No. 81.77 of 10 December 1981 states that:

[...] If the charges are proven, the judgement may, in the cases provided for under articles 250, 251, 252, 254, 255, 256, 256 bis, 259, 260, 261, paragraph 2, 265 and 266, also order confiscation of any publishing materials that may have been seized, and may in all cases order the seizure and suppression or destruction of all copies produced

Suppression or destruction may, however, apply only to some of th copies seized.

35. The same Act, amending article 278 of the Penal Code, states that:

In the event of a conviction under articles 250, 251, 252, 254, 255, 256 bis, 259, 260, 261, paragraph 2, 265 and 266, publication of t journal or periodical may be ordered suspended by the same legal decisi for a period not exceeding three months. Such suspension shall not affect any labour contracts binding upon the owner, who shall remain liable to all the contractual or legal obligations deriving therefrom.

36. The Act amends article 281 of the Penal Code to read: "Any killing committed with premeditation and lying in wait, or motivated by racial, ethn or religious discrimination, shall be regarded as murder."

37. Article 295 of the Penal Code as amended by the same Act states that:

in the event of premeditation or lying-in-wait, or where wounding is inflicted for reasons of racial, ethnic or religious discrimination, th penalty shall be increased to:

- 5 to 10 years' imprisonment in the case of the injuries covere by article 294, paragraph 1;

- 10 to 20 years' forced labour in the case of the injuries covered by article 294, paragraph 2.

38. Article 296, paragraph 2, as amended by the same Act, states that:

if there has been premeditation or lying-in-wait, or if the act was committed for reasons of racial, ethnic or religious discrimination, imprisonment shall be for 2 to 5 years, and the fine, from 50,000 to 200,000 francs.

39. The same Act amends article 623 of the Code of Criminal Procedure to state that in the case of any offence based on an act of racial, ethnic or religious discrimination, even if the culprit is resident in Senegal, the culprit may be held in pre-trial detention before judgement.

40. In order to shield social, political, economic and cultural associations and organizations from the temptation of discrimination, the Senegalese authorities have also drawn up legislative preventive measures.

41. Article 3, paragraph 1, of the Constitution, which deals with political parties, states that: "Political parties shall compete in expressions of the electoral will. They are required to respect the Constitution and the principles of national sovereignty and democracy. They are forbidden to identify themselves with any race, ethnic group, sex, religion, sect, language or region." Article 9, paragraph 3, of the Constitution states that "Any groups whose aims or activities are contrary to the criminal law or inimical to public order shall be prohibited".

42. Article 814, paragraph 2, (amended by Act No. 79.02 of 4 January 1979) of the Code of Civil and Commercial Obligations, dealing with the conditions for admission into an association, states that "For the purposes of admission into an association, discrimination based on race, sex or religion is prohibited".

43. Article 1, paragraph 5, of Act No. 65.40 of 22 May 1965 on seditious associations was amended by the anti-discrimination Act No. 81.77 of 10 December 1977 to read: "[...] prohibition of associations whose activities are devoted wholly or in part to the practice of racial, ethnic or religious discrimination or to incitement to such discrimination".

44. Lastly, the State has not overlooked the possibility that discrimination might be practised by public officials. Hence article 166 bis of the Penal Code, which was inserted by Act No. 81.77 of 10 December 1981, states that:

> Any administrative or judicial official, holder of elected office, public employee, State official or appointee in a public institution, nationally-owned company, jointly-owned company or body corporate under private law enjoying financial support from the public authorities who without good reason denies an individual or body corporate benefit of a right on grounds of racial, ethnic or religious discrimination shall be punishable by imprisonment of from three months to two years and a fine of 10,000 to 2 million francs.

45. It is also appropriate to mention other preventive measures based on the constant improvement of human relations, between individuals and between peoples, taken by Senegal to avoid falling into the snare of discrimination. For example, Act No. 81.03 of 2 February established the Université des Mutants pour le dialogue des Cultures, for the purpose of "helping to make culture a fundamental part of people's lives and enable it to play an active part in the development process". There is also the foundation, by Decree No. 83.302 of 13 March 1983, of the Institute for Human Rights, whose principal task is to teach human rights and peace between individuals and peoples; the Senegalese Human Rights Committee, established by Decree No. 78.180 of 3 March 1978, whose task is to consider and bring to public attention all matters relating to the promotion and protection of human rights; and, lastly, Act No. 71.36 of 3 June 1936, laying down legal

guidelines for Senegalese national education, the purpose of which is to produce balanced individuals, i.e. individuals who can accept others, and Act No. 86.40 of 11 August 1986, on the International Convention against Apartheid in Sports.

46. To conclude, let it simply be said that these efforts by Senegal, combined with those of the international community, give grounds for optimism and suggest that we will very shortly witness the total eradication of the phenomenon of apartheid from the African continent.